

EX PARTE

WILLKIE FARR & GALLAGHER

Washington
New York
London
Paris

EX PARTE OR LATE PRESENTATION

July 21, 1998

RECEIVED

JUL 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

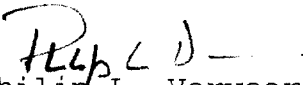
ORIGINAL

Re: Ex Parte Presentation in CC Docket No. 96-98;
CCB/CPD 97-30

Dear Ms. Salas:

On July 20, Don Shepheard, Vice President of Federal Regulatory Affairs, Time Warner Communications and I met with Paul Gallant, Legal Advisor to Commissioner Gloria Tristani, to discuss reciprocal compensation for delivery of ISP traffic. We left the attached paper.

Sincerely,


Philip L. Verveer

cc: Paul Gallant, Esq.

reg. of Copies rec'd
Ltr ABOVE

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: BCA 229800
WU 89 2762
Fax: 202 887 8970

Time Warner Telecom Position Reciprocal Compensation for ISP Traffic

- **There is no factual or legal basis for the FCC to eliminate reciprocal compensation for ISP traffic.**
 - The FCC has repeatedly affirmed its determination to treat ISPs as end users utilizing local exchange services purchased out of state tariffs.
 - Section 251(b)(5) of the 1996 Act provides the legal basis for reciprocal compensation for all local calls terminating on interconnecting networks.
 - The Act recognizes that termination of traffic on a competing network generates costs to the terminating network provider. Reciprocal compensation is integral to the recovery of local network investments.
 - Reciprocal compensation rates are negotiated between interconnecting parties, subject to state commission approval or state-commission arbitrated decisions.
 - 19 state commissions have upheld CLECs' right to reciprocal compensation for terminating traffic to ISP end users.
 - There is no difference between local calls placed to ISPs and calls placed to any other local end user where reciprocal compensation applies.
 - The call from the end user to the ISP is dialed and routed like any other local call to an end user.
 - The ISP subscribes to and receives business local exchange services from either an ILEC or CLEC.
 - End user calls to ISPs are treated like other local calls for billing purposes, and ILECs count ISP minutes as local for purposes of its accounting, separations, and network operations.
- **To the extent that existing interconnection agreements and local rate structures do not fully compensate interconnecting carriers, state commissions are authorized to take corrective action. No action is required by the FCC.**
 - Renegotiation/arbitration of existing interconnection agreements upon expiration.
 - Generic rate proceedings to explore alternative rate structures and compensation mechanisms.
 - As repeatedly stated by the Commission: *To the extent that some intrastate rate structures fail to compensate ILEC's adequately for providing service to customers with high volumes of incoming calls, incumbent local exchange carriers may address their concerns to state regulators.*

- **RBOCs like Bell Atlantic have been providing misleading information to gain Commission support and action for their cause.**
 - *Reciprocal compensation is free money that CLECs don't do anything to earn, and is the CLECs primary source of revenue.*
 - CLECs, including Time Warner Telecom, have invested billions of dollars in building networks that provide more advanced and lower cost competitive alternatives to business customers (including ISPs). Time Warner began investing in local networks well in advance of the Telecommunications Act and the notion of reciprocal compensation.
 - Time Warner Telecom offers a full-range of business products and services, including local dial tone, advanced data services such as ISDN, long-distance service, dedicated transport and private networks, and is planning to deploy more advanced packet-switched data networks.
 - Time Warner Telecom, like many other CLECs, is not pursuing ISPs as a primary line-of-business for reciprocal compensation revenue. However, CLECs are clearly acting in a legitimate, competitive manner, consistent with jointly agreed to, state-commission approved interconnection agreements.
 - While there are some CLECs, and ISPs certified as CLECs, that do not provide any facilities or dial-tone services, the Commission should let the market respond, rather than intervene to prescribe "marginal" fixes.
 - The history of competition is that competitors find and exploit market niches where rates are too high until the market responds with lower rates.
 - This is a ratemaking issue that states can address.
 - *Reciprocal compensation deters network investment for residence services and advanced data networks.*
 - The notion that ISP reciprocal compensation is responsible for the lack of residential competition is ludicrous on its face. This is just another in a long-line of ILEC ploys to blame competitors for the lack of competition and ignore their own role in refusing to open markets fully to competition as required by the Act.
 - ISPs have already turned to CLECs for advanced data services. Demand will be driven by end users seeking greater bandwidth, not by RBOCs seeking monopoly protection.
 - *State commission and court decisions are based on mistaken interpretation of prior Commission orders.*
 - Ignores the contractual basis for state decisions. Reality is that contracts were signed without any differentiation between local calls terminated to ISP and all other end users. In the case of Time Warner and Ameritech, for example, this was despite detailed discussion of ISP traffic.
 - The Commission should not encourage and reward "venue shopping" to avoid state enforcement of contractual agreements

- **In maintaining the status quo for ISPs as end users, the Commission should preserve the status quo of reciprocal compensation, and defer to carrier negotiations and state commissions for future resolution. Unilateral FCC elimination of reciprocal compensation at this time will:**
 - Harm data services competition;
 - Have harmful effects on CLEC finances and ability to continue investing in competing networks;
 - Deter competition by creating contractual uncertainty; and
 - Be perceived as an assault on state jurisdiction.